

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXX

Petitioner

No. 92539-001

v

Blue Care Network of Michigan
Respondent

Issued and entered
this 20th day of November 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On August 8, 2008, XXXXX, on behalf of her XXXXX old daughter XXXXX, filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On August 15, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The issue in this matter can be resolved by analyzing the Blue Care Network 5 certificate of coverage which defines the Petitioner's health coverage. It is not necessary to obtain a medical opinion from an independent review organization. The Commissioner reviews contractual issues under MCL 500.1911(7).

II

FACTUAL BACKGROUND

On April 18, 2008, XXXXX had four teeth extracted at XXXXX Center in XXXXX. XXXXX charged a total of \$5,860.15 for its services. (The oral surgeon's charge for the

extractions was covered by Petitioner's dental insurance through another carrier and is not a part of this appeal.)

On April 28, 2008, BCN sent Petitioner an explanation of benefits form indicating it had paid for the anesthesia services for her surgery. On June 9, 2008, BCN sent Petitioner a second explanation of benefits form indicating it would not provide coverage for any part of XXXXX's charges for the surgery. The services cited on the hospital's invoice are:

Pharmacy	115.15
Medical supplies	797.00
OR Services	2,391.00
Anesthesia	986.00
Pulmonary function [monitoring]	250.00
<u>Recovery room</u>	<u>1,321.00</u>
TOTAL	5,860.15

The Petitioner appealed BCN's decision to deny coverage. After the Petitioner exhausted the internal grievance process, BCN maintained its decision and issued a final adverse determination letter dated July 28, 2008.

III ISSUE

Did BCN properly determine benefits for the Petitioner's April 18, 2008 surgery?

IV ANALYSIS

Petitioner's Argument

The Petitioner needed to have four primary teeth extracted. On April 4, 2008, her oral surgeon, Dr. XXXXX, attempted to remove the teeth in his office under intravenous sedation. However, the Petitioner did not react well to the anesthetic. Dr. XXXXX was unable to complete the treatment and determined it would be better to treat her in the hospital due the symptoms she was experiencing. The Petitioner was scheduled for surgery on April 18, 2008 at XXXXX.

According to Petitioner's mother, a few days prior to surgery they received a call from XXXXX advising her that Petitioner's Blue Cross coverage (which was through her father) was

no longer in effect. Petitioner's mother then added the Petitioner to her own BCN coverage. XXXXX was informed of the change in coverage. Petitioner's mother says that at no time after notifying XXXXX of the BCN coverage did she or Dr. XXXXX receive notice that the services would not be covered. On April 18 the Petitioner proceeded with treatment at XXXXX.

The Petitioner's mother says she thought she was following the guidelines of BCN when she provided her benefits information to XXXXX prior to the surgery. She argues that the hospital services should be covered because the surgery could not safely be provided in the office.

BCN's Argument

In its July 28, 2008 final adverse determination, BCN wrote, "dental extractions that are not the direct result of trauma are specifically excluded from BCN medical policy and members Certificate of Coverage." BCN cited sections 1.19 and 2.14 of Petitioner's certificate of coverage in support of its decision.

Commissioner's Review

As a preliminary matter, the Commissioner notes that BCN initially elected to provide coverage for Petitioner's anesthesia (see April 28 explanation of benefits) and then later rejected coverage for the anesthesia (see June 9 explanation of benefits). BCN did not offer an explanation for this apparent contradiction. However, given the findings stated below it is not necessary to reconcile the two benefit statements.

Analysis of this appeal begins with two provisions in the certificate of coverage, both cited by BCN and reprinted below:

1.19 Oral Surgery

* * *

Oral surgery and X-rays are covered only when BCN preauthorizes them for:

- Treatment of fractures or suspected fractures of the jaw and facial bones and dislocation of the jaw.
- Oral surgery and dental services necessary for immediate

repair of trauma to the jaw, natural teeth, cheeks, lips, tongue, roof and floor of the mouth.

- Dental anesthesia in an outpatient setting when medically necessary and approved by BCN.

NOTE: "Immediate" means treatment within 72 hours of the injury.

- Medically necessary surgery for removing tumors and cysts within the mouth.

Copayment: \$5 for each office visit.

NOTE: Hospital services are covered in full in conjunction with oral surgery when it is medically necessary for the oral surgery to be performed in a hospital setting.

Part 2: Exclusions and Limitations

* * *

2.14 Dental Services

We do not cover dental services, dental prostheses, replacement of teeth, X-rays, oral surgery or anesthesia for a dental procedure except as specially stated in Section 1.19.

In addition to these provisions, BCN has a written policy regarding oral surgery. The policy includes this statement:

Outpatient and inpatient hospital services and anesthesia may be viewed as medical services when required for routine dental procedures such as extractions in instances where the patient has a potentially hazardous status requiring close monitoring. Examples of these conditions would include:

- Bleeding or clotting abnormalities
- Unstable angina
- Severe respiratory disease
- Known reaction to analgesics/anesthetics
- Patient safety relative to office sedation due to age or mental/emotional status

Given Petitioner's documented adverse reaction to the sedation provided in the oral surgeon's office and her young age, Petitioner qualifies under two categories of BCN's medical policy to have her hospital care approved for coverage.

BCN does not challenge the statements of Petitioner and her oral surgeon that the extractions were medically necessary. BCN does not challenge the surgeon's statement that the procedure could not be performed in his office and had to be performed in a hospital.

The Commissioner finds that the hospital services the Petitioner received on April 18, 2008 are covered benefits under her certificate of coverage.

**V
ORDER**

The Commissioner reverses BCN's final adverse determination dated July 28, 2008. BCN shall provide coverage for the hospital services connected with Petitioner's April 18, 2008 surgery, subject to any copayments, deductible and coinsurances. BCN shall comply within this Order within sixty days and shall provide the Commissioner with proof it complied within seven days of compliance.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County.

A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.